

September 29, 2000

Two More Horrific Cases from Virginia

Passion, Politics, and "Hate Crimes"

The tragic murder of Danny Lee Overstreet in Roanoke, Virginia, last week is being used for political purposes. That is not unusual, of course, nor is it necessarily wrong. The political attention that is given to notorious crimes often leads to needful reforms, some of them long overdue.

At the same time, political leaders must be careful that their passions do not overwhelm their judgment. Caution is indispensable when special-interest groups are trying to manipulate political passions — and passions can run especially high when the subject is "hate crimes". Consider a recent example involving the Commonwealth of Virginia:

On June 20, 2000, the United States Senate was debating two hate-crimes amendments that were later approved and added to the Defense Authorization Act. During that debate, the Junior Senator from Virginia referred to the murders of James Byrd, Jr. (In Texas) and Matthew Shepard (in Wyoming), and then said:

"Hate crimes have occurred in the Commonwealth of Virginia as well. In 1999, a man was sentenced to life in prison and fined \$100,000 for his role in the death of an African-American man who was beheaded and burned in Independence, Virginia. And a homosexual man was murdered and his severed head was left atop a footbridge near the James River in Richmond, Virginia. It is hard to imagine the pain and suffering of the victims and their families." 146 Cong. Rec. S 5422 (daily ed. June 20, 2000).

Yes, the pain and suffering suffered by the victims and their families is hard to imagine. *Unfortunately for the Senator's argument, neither of the crimes he referred to was a government certified "hate crime".* Accordingly, under the "hate-crimes" theory, neither of the horrible murders to which the Senator referred would be accorded the added prominence and importance that are given to official "hate crimes". That, too, is hard to imagine — and impossible to defend. The relevant facts follow:

The Burning, Murder, and Decapitation of Garnett Paul Johnson, Jr. in Independence, Virginia Was Not a Government-Defined "Hate Crime". G.P. Johnson, a black man, was murdered in July 1997 in a small town not far from the Carolina border. Many facts about the murder still are not known (or are in dispute since the two murderers' accounts are quite different), but we do know that a party of friends fueled by moonshine, bourbon, and beer ended with G.P. Johnson's murder and beheading. Before his death, Mr. Johnson was set ablaze. Two white men have been convicted of the murder. One was convicted by a jury of first degree murder and

sentenced to life imprisonment plus a \$100,000 fine (he will be eligible for geriatric release at age 60). [See generally, *Creswell v. Commonwealth*, 531 S.E.2d 1 (Va. Ct. App., July 11, 2000).] The other pleaded guilty to capital murder and is serving two life sentences; he will never be eligible for parole.

The murder of G.P. Johnson was *not* a government-certified hate crime, although some people would like to make it so, including some reporters from the media who, it seems, were hoping to create a story about racial hatred in a sleepy Southern backwater. [See, e.g., D. Struzzi, "A Trial in Grayson County, A Crime Against the Community," *Roanoke Times*, Feb. 15, 1998.]

Here's how we know that the crime was not a certified government "hate crime":

- First, neither the State nor the Federal Government reported the Johnson murder as a "hate crime" (even though the sheriff had asked the F.B.I. to investigate it as a possible hate crime). The U.S. Department of Justice's official publication, *Hate Crimes Statistics 1997*, shows in Table 8 that Virginia had *zero* hate-crime murders in 1997.
- Second, the Johnson murder was not prosecuted as a "hate crime". The Commonwealth's attorney did not present a racial motive in his prosecutions of the two defendants.
- Third, after the successful State prosecution, the U.S. Department of Justice completed a lengthy investigation and concluded that it could not tell if there had been a violation of the Federal hate-crimes law. [L. Hammackthe, "Killers Won't Face Hate Crime Trial; Justice Dept. Satisfied With Grayson County Verdicts," *Roanoke Times*, May 5, 1999.] It is also interesting to know that the Federal Government sent a mediator to the community soon after the murder, and he said he didn't see any racial problems waiting to explode.

As for less formal sources, Mr. Johnson's own father said that he didn't believe race played a role in his son's murder. At the local chapter of the NAACP, the president said he believed that individual racism may have played a role, but that the murder was no reflection on the community as a whole, and the local vice president said he didn't believe that Johnson's death was a race crime. (Some outsiders saw it differently. The chairman of the Southern Christian Leadership Conference called the murder "nothing less than a lynching.")

The *Roanoke Times* story of May 5, 1999, is worthy of being quoted at length:

"As hateful as the burning and beheading of Garnett "G.P." Johnson was, his murder will not be prosecuted as a hate crime.

"After a lengthy investigation, the U.S. Department of Justice announced Tuesday that it has closed its probe without a definitive finding of whether Johnson's murder was a racially motivated hate crime. * * *

"While it was unclear whether there was a violation of federal law, we feel satisfied that the federal interest in this case has been vindicated through the state's successful

prosecution,' said Bill Lann Lee, acting Assistant Attorney General for Civil Rights.

"Members of Johnson's family were just as satisfied that there will not be a second prosecution.

"I think it would only serve to open up a lot of old wounds, and make it difficult all over again for the family and the community,' said Jeff Johnson, the victim's cousin.

"For Johnson, what motivated the killers is secondary to the horror of what they actually did. 'I can't imagine anything more vile than setting someone on fire while they were still alive . . . and after that to chop their head off,' he said.

"Whatever their motivation — and I still don't know what it was — it's just hard to imagine there are people in the world who would do something like that.'

"Ever since Garnett Johnson, 40, was murdered among friends in Grayson County the night of July 25, 1997, questions have lingered about whether his gruesome death was the product of racism, robbery, or reasons forever lost in the drunken haze of a mountainside party.

"The slaying outraged black leaders across the country and prompted the Justice Department probe. But investigations by both state and federal authorities did not yield a clear motive. * * *

The murder of G.P. Johnson was *not* a government-certified hate crime, and statements to the contrary are inaccurate. However, the murder of G.P. Johnson *was indeed* one of the most despicable crimes that any of us are likely to read about.

Now that we know that G.P. Johnson's murder was not an official "hate crime", does it change our opinion of the crime? Is the crime somehow less vile because no government agent certified it as an official "hate crime"? Are the murderers less culpable because they acted out of (let's call it) rage rather than politically incorrect "hatred"? Is the Johnson family entitled to fewer of their government's criminal justice resources because their son died because of rage rather than "hatred"? For most Americans, these questions answer themselves. Regrettably, though, it is the premise behind "hate-crimes" laws that make these questions necessary.

The Murder and Decapitation of Henry Edward Northington in Richmond, Virginia Was Not a Government-Defined "Hate Crime". Henry Edward Northington was killed in March of 1999. Mr. Northington was decapitated, and his head was placed on a walkway over the James River in Richmond, Virginia. His body was tossed into the river and found three-quarters of a mile downstream. At the time of his death, Mr. Northington was homeless. Mr. Northington also was a homosexual.

No arrests have been made in the case, and the police do not have a motive. Police speculate that the head was placed "to make a statement of some kind," but they don't know what that

statement was. One of the detectives investigating the case said, "It may be a hate crime, it may be a sex crime, it may be a ritualistic crime. We really don't have anything concrete. . . ." [M. Holmberg, "Beheading Stuns Gay Community; Many in Area Say They Hope Slaying Wasn't a Hate Crime," *Richmond Times-Dispatch*, Mar. 7, 1999. The same article says the following:

"The discovery, and the later identification of the victim, was enough to give many in Richmond's gay and homeless communities the shivers. Homeless people walking the street were stunned by the news that one of their own had been beheaded."

Mr. Northington's murder should remind us of this uncomfortable fact about the pending "hate-crimes" language: If he had been murdered because of his "sexual orientation" the murder would have been a "hate crime", but if he had been murdered because of his homelessness it would *not* have been a hate crime. This sort of distinction (and this one example could be multiplied) strikes many opponents of the hate-crimes language as simply indefensible.

According to press reports, Mr. Northington was well liked and talented (he played the piano beautifully), until he got drunk. When drunk, he could be obnoxious and physically and sexually aggressive. He had been banned from several Richmond bars that are popular with homosexuals. Suppose Mr. Northington was murdered, not because of his "sexual orientation" *per se*, but because of his aggressive sexual behavior once he was drunk. Would that murder be a "hate crime"? Students of the "hate-crimes" language wonder what the connection might be between "sexual orientation" and sexual *behavior*.

Mr. Northington's killers remain at large. Their motives are unknown. Neither the Junior Senator from Virginia nor anyone else knows if his murder was a "hate crime".

For those who question the need for "hate-crimes" language, it simply doesn't make any difference if the murder was a "hate crime" or not. For them, the murder itself is entirely sufficient to justify punishment, and the Commonwealth of Virginia (unlike the pending "hate-crimes" language) has decreed that some murders justify the punishment of death.

On the other hand, those who are calling for enactment of a new Federal hate-crimes law want to draw distinctions between murders that otherwise would be identical: According to the "hate crimes" mentality, If Mr. Northington was killed because of his "sexual orientation", that would constitute a very bad deed and the Federal Government might get involved. But, if he were killed because of his homelessness, the deed would somehow be less bad and there would be no Federal interest and no Federal involvement.

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